

Lawless Law Enforcement

It is inglorious, to say the least, that the Solicitor General of the United States should be obliged to come before the Supreme Court and confess that FBI agents "bugged" the hotel suite of a defendant in a Federal prosecution. "Bugging" is not, of itself, necessarily unlawful. But when it is accomplished, as the Solicitor General's confession indicates it was in the Black case, by installing "a listening device" in the private premises of a suspect without his consent, it entails a trespass and thus a violation of the Fourth Amendment. As happens so often, given the dragnet character of electronic eavesdropping, the "bugging" in the Black case involved confidential—and customarily privileged—conversations between the defendant and his lawyer.

Moreover, by the Solicitor General's own admission, "the listening device was in operation from approximately two months before until approximately one month after the evidence was presented to the grand jury and the indictment was returned." Now, in the *Massiah* case, decided in 1964, the Supreme Court held that the Sixth Amendment prohibits Federal officers' deliberate extraction of incriminating statements from an indicted person without presence of counsel. It seems likely that the FBI was guilty of violating Sixth Amendment as well as Fourth Amendment rights.

"During the preparation and trial of petitioner's case," Solicitor General Marshall told the Court, "no attorney involved in its presentation (or, so far as appears, any other attorney of the Department of Justice) knew that a listening device had been installed in petitioner's suite." The inference one must draw from so great a degree of naiveté is that the FBI operates without supervision or control by the Attorney General.

Mr. Black, and Robert Baker, linked with him in this investigation, have contended loudly that the FBI engaged in wiretapping as well as "bugging." The use of wiretapping is plainly prohibited by an Act of Congress, and the FBI insists that it never, never violates this law except with the express approval of the Attorney General and then only when, in the judgment of its Director and the Attorney General, national security is involved. It would enjoy greater credibility in this connection if it were not an acknowledged lawbreaker.

"Bugging," like wiretapping, is a questionable technique of law enforcement, injuring the community in our judgment, rather than benefiting it. Whatever aid it may give to law enforcement is outweighed by the evil inherent in its impairment of privacy. The worst of what has been disclosed by the Solicitor General is not that a couple of persons may escape punishment because law-enforcement authorities blundered; it is that the law-enforcement authorities seem to have been systematically and deliberately disregarding the law.

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